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May 15, 2007

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: dPi Teleconnect, LLC, Complainant/Petitioner v. BellSouth Telecommunications,
Incorporated, Defendant/Respondent
Docket No.: 2005-358-C

Dear Mr. Terreni:

Enclosed for filing are an original and one (1) copy of AT&T's Response to dPi Teleconnect, LLC's ("dPi") Motion to Compel in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this response as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is fluid and cursive, with the first name "Patrick" being more prominent.

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
DM5 #677815

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

dPi TELECONNECT, LLC,)	
)	
Complainant,)	
)	Docket No. 2005-358-C
v.)	
)	
BELLSOUTH TELECOMMUNICATIONS,)	
INC.)	
)	
Defendant.)	
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**AT&T's RESPONSE TO dPi TELECONNECT, LLC'S ("dPi")
MOTION TO COMPEL**

BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T"), through undersigned counsel, respectfully submits this Opposition to the Motion to Compel that dPi Teleconnect, LLC ("dPi") filed on March 22, 2007.

Factual Background¹

On November 9, 2005, dPi filed this action before the Public Service Commission of South Carolina ("the Commission") against AT&T alleging AT&T wrongfully failed to make available three certain retail promotions to dPi.² To the contrary, AT&T makes its retail promotions available to reseller CLECs, such as dPi, by giving them a credit for

¹ Because the parties have yet to file direct testimony in this docket, much of the factual background provided herein is derived from the parallel proceeding that was tried before the North Carolina Utilities Commission. The NCUC issued an order in AT&T's favor and dPi has filed an appeal.

² dPi is a resale CLEC that buys services at wholesale from AT&T at a legally-mandated discount price and resells these services at a marked up price to end user customers.

the value of the promotion, ***if*** the CLEC end user meets the same criteria an AT&T customer must meet in order to qualify for the promotion. For example, one promotion at issue in this docket is the Line Connection Charge Waiver (“LCCW”) which gives an AT&T customer a credit for the line connection charge if the customer, among other requirements, purchases at least basic service and two features, such as caller ID or call waiting. Likewise, in addition to other criteria, if a CLEC end user purchases basic service plus two features, AT&T will provide the CLEC a credit under the promotion for the line connection charge.

Without the knowledge of its end users, dPi places on several of its customers’ lines usage blocks that prevent its end users from using certain features such as call return and repeat dialing that, in the absence of the blocks, can be utilized on a per usage basis, e.g., without a monthly subscription charge. These line usage blocks are provided by AT&T to dPi free of charge. However, dPi claims in this docket that it is entitled to a credit under the LCCW promotion when it places these two blocks on a customer’s service, even though these blocks are not “features” as that term is commonly understood and these blocks are not “purchased” by the end user.

Discovery Requests at Issue

On March 22, 2007, dPi filed a Motion to Compel related to two of AT&T’s discovery responses. AT&T provides this response to each item raised by dPi.

Item No. 1-23

dPi and AT&T agree that responding to this request would require manual review of thousands of orders and thus be overly burdensome. Accordingly, dPi and AT&T have agreed that AT&T will conduct a sampling of these orders. The parties are

currently working out the details of the procedure for this sample. Thus, the parties are not asking the Commission to take any action in relation to this item at this time. If the parties are unable to agree to a procedure for this sampling, the parties may need to ask the Commission for assistance in that regard at a future date.

Item No. 2-3

REQUEST: Please supplement your response to RFI 1-16 of dPi Teleconnect's First Set of Request for Information to BellSouth Telecommunication, Inc. ("For each of categories of promotions for which dPi Teleconnect, LLC, applied for credit but was denied, please indicate the amount of credit requested; the amount of credit granted; and the amount of credit denied, from January 1, 2002, to the present.") to indicate, for each of the reasons identified as a reason why dPi Teleconnect, LLC, was not eligible for a particular credit, the total dollar amount of credits applied for but denied for the particular reason given. In other words, dPi Teleconnect, LLC wants to know how many times/how much credit was denied for every reason given as a reason for denying credit.

RESPONSE: In response to RFI 1-16, AT&T provided a spreadsheet listing the promotion, credit given, credit requested and credit denied, beginning in 2003 through 2006. AT&T objects to supplementing this response as requested on the grounds that doing so would be unduly burdensome and on the grounds that dPi has had ample opportunity by discovery in this docket to obtain the information sought.

While AT&T maintains the information necessary to respond to the request, it does not maintain that information in a format that allows AT&T to quickly or easily respond to the Request. Instead, AT&T would have to manually review records associated with each relevant service order to provide the supplemental information requested. dPi already is in possession of the end user telephone numbers submitted and the associated service orders, and those records contain the same responsive information as AT&T's records contain. dPi, therefore, can obtain and process the requested information as easily as AT&T could.

Argument

As noted in its response above, AT&T provided a spreadsheet to dPi listing the promotion, credit given, credit requested, and credit denied for the years 2005 through 2006. Additionally, dPi has in its possession the requests for credit it made, as well as AT&T's denial of non-qualifying credit requests. Finally, AT&T has provided in its discovery responses to dPi the qualifications for the promotions at issue and the various reasons its credit requests were denied. Now, in Item 3-1, dPi wants AT&T to go even further by creating a spreadsheet compiling the total amount of credit denied by reason for denial.

AT&T does not maintain records identifying the specific reason it denied a specific credit request submitted by dPi. Because of the large volume of requests from dPi from March 2005 until March 2006, AT&T personnel processed dPi's requests for credit by processing a sampling of the requests and extrapolating the results of that sample to the remaining requests.³ In doing so, AT&T personnel manually reviewed the sampled requests and marked those for which a credit was not appropriate for one or more of the reasons AT&T has identified to dPi in discovery. AT&T personnel did not record the specific reasons for denial of any specific request.⁴

Accordingly, in order to provide dPi the information it now seeks, AT&T would be forced to spend approximately 50 man hours manually reviewing each request for credit (which dPi has in its possession), comparing it to the qualifications for the promotions at issue (which dPi has in its possession), manually determining why each

³ It is not uncommon in the industry to use a sampling process for determining promotion credits.

⁴ AT&T has offered to provide to dPi a list of the phone numbers of the sampled requests that were denied.

credit request was denied, and tallying the amounts for each reason. As demonstrated herein, dPi has the same information in its possession (either because the records are dPi's own or because AT&T has provided such in discovery) that would allow it to undertake this manual task, if it deems it necessary to its case. AT&T, therefore, respectfully submits that the Commission should deny dPi's motion to compel with regard to Item No. 2-3.

AT&T's position is supported by Rule 33(c) of the South Carolina Rules of Civil Procedure, which provides that "[w]here the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served . . . and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained. . . ."⁵ Additionally, when interpreting the companion provision in the Federal Rules of Civil Procedure, courts have found that "normally a party should not be compelled to answer an interrogatory that requires compilation of data when that party is willing under Fed.R.Civ.P. 33(c) to allow the requesting party access to records from which the requesting party can make his own compilation of the data." *Penk v. Oregon State Board of Higher Educ.*, 99 F.R.D. 504, 505 (D. Or. 1982); *see also Leonia Amusement Corp. v. Loew's Inc.*, 18 F.R.D. 503, 507 (S.D.N.Y. 1955) ("It is elementary that a party has no right to require his opponent to make compilations of information when documents containing the material necessary for the compilations are available to the first party").

⁵ S.C. R. Civ. P. 33(c). The South Carolina Rules of Civil Procedure govern this discovery matter. S.C. Code Regs. § 103-854.

dPi's stated reason for requesting information responsive to Item No. 2-3 is that "[t]his information is critical in focusing the parties' resources on those issues that really matter: no side wants to spend thousands of dollars in legal time on a dispute worth \$100."⁶ AT&T's obligation in discovery is to produce information "relevant to the subject matter involved in the pending action."⁷ Information regarding potential damages for dPi's claims is relevant to the subject matter of this action, and AT&T has already produced this information. A compilation of the information that has already been produced to dPi in order to aid dPi in making strategic and tactical decisions about its litigation, however, goes far beyond what is required of AT&T in responding to dPi's discovery requests.

Here, the burden on dPi to manually compare each credit request to the qualifications of the three promotions at issue in this docket is no greater than the burden on AT&T to do the same. AT&T has provided to dPi the various reasons it was denied credit for each of these three promotions and further has provided dPi the total credit requested, the total amount paid, and the total amount denied for each promotion. Additionally, dPi has in its possession the credit requests that it submitted to AT&T. Thus, dPi itself has all the necessary documentation to compile the same summary that it is requesting from AT&T.

Conclusion

AT&T asks the Commission to deny dPi's Motion to Compel. AT&T has provided dPi the documentation it has in its possession related to dPi's request and should not be forced to create summary documents for dPi, particularly considering dPi has

⁶ dPi's Motion to Compel at p. 4.

⁷ S.C. R. Civ. P. 26(b)(1).

equal access to documentation from which it could create its own summation.

Respectfully submitted on this 15th day of May, 2007.

By: Patrick W. Turner
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ATTORNEY FOR AT&T
SOUTH CAROLINA

675639

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina (“AT&T”) and that she has caused AT&T’s Response to dPi Teleconnect, LLC’s (“dPi”) Motion to Compel in Docket No. 2005-358-C to be served upon the following on May 15, 2007.

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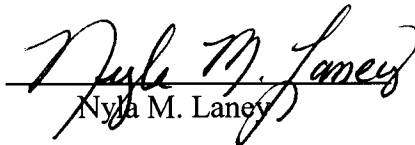
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